

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Parts 1, 21 and 74 to)	MM Docket No. 97-217
Enable Multipoint Distribution)	
Service and Instructional)	File No. RM-9060
Television Fixed Service Licensees)	
To Engage in Fixed Two-Way)	
Transmissions)	

To: Chief, Video Services Division
Mass Media Bureau

REPLY COMMENTS OF THE SAN FRANCISCO-SAN JOSE
EDUCATOR/OPERATOR CONSORTIUM

The San Francisco - San Jose Educator/Operator Consortium (the "Consortium") hereby submits these Reply Comments in connection with the Commission's Notice of Proposed Rulemaking, FCC 97-360, MM Docket No. 97-217, released October 10, 1997 ("NPRM").¹

In its Comments, the Consortium supported revision of the FCC's rules to expedite ITFS and MDS services, including two-way services, provided that the Commission's programming and procedural rules are appropriately adjusted (or maintained with no change in some instances) and any streamlined processing procedures include adequate safeguards against harmful interference.

¹The Consortium consists of the Roman Catholic Communications Corporation ("CTN/San Francisco-San Jose"), the Regents of the University of California - on behalf of the University of California, Berkeley and University of California, San Francisco ("UC"), the Association for Continuing Education ("ACE"), Peralta Community College District ("Peralta"), the Santa Clara County Board of Education ("Santa Clara BOE"), San Jose State University ("San Jose State") and their operator lessee, Wireless Holdings, Inc. ("WHI"), d/b/a Bay Area Cablevision, Inc. The seven educators in the Consortium are licensed for a total of 42 ITFS channels, 22 serving the northern San Francisco area region and 20 serving the San Jose region to the south. The Consortium previously filed comments in this proceeding on January 8, 1998 ("Consortium Comments").

With regard to application processing, the Consortium urged the Commission to adopt: (1) stringent interference standards as proposed in the NPRM; (2) rules requiring FCC staff review of tendered applications prior to their acceptance for filing; and (3) expedited procedures for resolving post-grant interference complaints.² In the reply phase of this proceeding, the Consortium suggests one clarification and one modification of these proposals.

First, the Consortium believes that speedy processing is critical to launching two-way distance-learning, and other services. However, in order to adequately protect against unanticipated post-grant interference, the Consortium recommended in its Comments that Commission staff review tendered applications “to ensure that the technical showings are adequate and procedures for service on affected parties are fully satisfied” prior to acceptance for filing.³ In reply to the comments filed by the Petitioners in this proceeding,⁴ the Consortium notes that it fully agrees with Petitioners that there is an overwhelming need to balance interference avoidance with expedited consideration of applications.⁵ In the interest of expedient processing, Petitioners suggest that FCC staff review applications for completeness and make a determination that all nearby previously proposed and

²See Consortium Comments at 19.

³Id.

⁴The NPRM was initiated at the request of over one hundred participants in the industry, including the Wireless Cable Association International, Inc., system operators, MDS and ITFS licensees and others (collectively, the “Petitioners”). The Petitioners’ Comments in this proceeding were filed on January 8, 1998 (“Petitioners’ Comments”).

⁵Petitioners seem to suggest that the new streamlined processing scheme should apply not only to two-way proposals but to all applications, including modifications to add digital emissions, increase power, change transmission site, except for proposals for new ITFS stations. The Consortium believes that streamlined processing should apply to all applications other than those proposing new ITFS stations, which would continue to be processed pursuant to periodic filing windows, with mutually exclusive applications subject to the comparative points system.

licensed facilities have been analyzed for potential interference or have consented, but not verify the interference analysis itself before placing them on public notice as accepted for filing.⁶ Petitioners' proposal strikes an appropriate balance between prompt processing and protection against unanticipated post-grant interference. Accordingly, the Consortium clarifies that its own proposal should not be construed to conflict with Petitioners' proposal.

Second, in its Comments, the Consortium proposed that the Commission adopt expedited post-grant interference resolution procedures. The Consortium suggested that parties experiencing harmful interference be required to file complaints within 10 or 30 days of first experiencing the interference, depending upon whether they choose arbitration or a Commission determination to resolve the complaint.⁷ The Consortium understands that Petitioners support this proposal provided that the expedited procedures are applied to interference complaints filed at any time. The Consortium agrees that cooperation among interfering parties and private resolution of interference would be more effectively encouraged if expedited procedures are made available in connection with interference complaints filed with the Commission as a last resort, after private negotiations have failed, rather than limited to complaints filed within a short period after interference first occurs. Thus, the Consortium respectfully requests that the complaint resolution proposal set forth in the Consortium Comments be modified to provide for expedited resolution of complaints filed at any time after harmful interference occurs.

In sum, as set forth above and in its Comments, the Consortium supports the objective of implementing two-way and other ITFS and MDS services as expeditiously as possible, consistent


⁶See Petitioners' Comments at 18-29.

⁷See Consortium Comments at 19-21.

with the educational needs of ITFS licensees and consumer demand for digital video delivery and Internet access services. Although the Consortium believes that, in streamlining application processing, the Commission must adopt special procedures to guard against unanticipated harmful interference, such additional safeguards must not thwart speedy processing. To that end, the Consortium supports the application review process proposed by Petitioners and agrees with Petitioners that expedited interference resolution procedures should be applied to interference complaints filed at any time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Yvette King, a secretary with the law firm of Rini, Coran & Lancellotta, P.C., do hereby certify that I caused a copy of the foregoing "Reply Comments of San Francisco-San Jose Educator/Operator Consortium" in MM Docket No. 97-217 to be mailed first-class, postage prepaid, this 9th day of February, 1998 to the following:

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